

THE ROLE OF AGRICULTURAL CO-OPERATIVES IN THE SALE OF AGRICULTURAL PRODUCTS

by

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Preliminary observations

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PRELIMINARY OBSERVATIONS

- a) *Planned economy* is the basic feature of any kind of socialist system. However, in our days, planned economy can take various *forms*. For a length of time the countries of Eastern Europe adopted the original *Soviet model*. In the Hungarian legal and economic literature this model of planned economy — together with the other government-controlled organisatory means of the national economy grouped around it — is called a *direct plan-controlling* or more simply, a *direct economy-controlling* system.

Essential features of this system are the following:

- *national economy* is being *centrally directed* as a *single enterprise* on basis of the national economy plan elaborated — with the participation of various other public organs — by the National Planning Office, on the assumption that the central organ can estimate all requirements and can likewise organise the production and turnover aimed at optimal satisfying of these requirements;

- the central control organ – in principle under the supervision of the government – determines the *structure of the managing organs* of economy, that is to say defines what such organs may exist and what their tasks are;
- within the *sphere of tasks* of national economy deemed by the government as of *primary importance*, *state-owned companies* act with practically total exclusivity; *their proper line* being strictly defined by positive rulings; *each state-owned company may only pursue the activity* to which they are expressly authorised in their statutes, while *within the state-owned sphere companies can be founded for any specific economic task*;
- each company has an exact allotted *plan target* based mainly on subsistential indices and they are committed to achieve this target; if the company acts in accordance with the rulings, it is centrally deemed as “*managing well*” if not, as “*managing wrong*”.
- commerce – executing practically tasks of *distribution* – is likewise ranged among the most important economic activities; accordingly, *commerce is a state-controlled activity or more exactly an activity pursued by a state-owned company*;
- *co-operatives* – in whatever form – are *economic organs of secondary importance*; it follows that they are not allowed to execute tasks of primary importance and are *driven out of trade* – an exception being constituted by the co-operatives for purchase, consumption and sale maintained in the villages to cater for peripheral regions and having a very restricted scope only;
- as it is, the sphere of activity of co-operatives is held in very narrow limits *co-operatives belonging to a certain branch may pursue certain definite activities* only – for instance an agricultural co-operative may only be engaged in agricultural production and is not allowed to keep a shop or set up a manufacturing/processing plant;
- though – as per the legal regulation – no obligatory plan target may be allotted to *co-operatives*, still in a rather complicated way, they *become plan-committed*, one of the consequences being that if they comply with their plan-commitments, they will have neither funds nor labour left for other activities;
- as the economic activity relegated to the sphere of co-operatives – and in particular the activity of the agricultural co-operatives within the scope in which they are forced to exercise their activities – brings hardly any profit, it is the *primary duty of the supervisory organs of co-operatives to make sure that the co-operatives do not exceed their sphere defined by the referring legal regulation* lest they may discontinue the, for them, unprofitable agricultural production.
- the regulations referring to the legal standing of legal entities did likewise render impossible any transgression of the sphere of activity, declaring:
 “A legal entity has legal standing in the sphere determined by their purposes fulfilled within the People’s Republic of Hungary and by

the requirements of the socialist co-operation" (Ptk. § 28, Section (2))¹. On basis of the Paragraph the Court considered null and void any contract concluded by parties through exceeding the said sphere of activity: "A contract concluded by an agricultural co-operative exceeding the legally defined scope of activity is null and void (position taken under No. 7/1970 at the division chairmen's conference of the Supreme Courts, Civil College).

As shown by the foregoing, *in this form of planned economy* — on account of legal regulation — *agricultural co-operatives* were excluded from trade, to be more exact, *from pursuing commercial activities*. Agricultural co-operatives had the task — and the possibility — to raise agricultural produce, sell these in natural state (in many cases at a price below cost) to the central purchasing agency and to procure — frequently on allocation basis — the industrial products required for their agricultural work. Beyond the fact that *contracts transgressing this sphere are null and void* (Ptk § 200 Section (2), § 234 Section (1)) the managing executives of the co-operative (several of them) *were also subjected to proceeding under the penal law*.

b) Planned economy — and the correlated system of means — have undergone considerable changes in Hungary. It should be noted that this change took a long time and did not proceed without jerks and relapses. It is likewise to be noted that today the other socialist countries (or their overwhelming majority) have taken steps towards the solution found in Hungary or some similar arrangement, however, while those endeavours are as yet in an "experimental" stage, in Hungary, the characteristic features of an *indirect economic management* can be clearly traced, such as:

- central planning has been left unchanged, directing of the national economy likewise, however, *the plan* is that of the government and *is not broken down to economic units*, the enterprises act *independently* according to their own plans, the *central organs* of economic management *may interfere with the company production by direct instructions only rarely at conditions defined in the legal regulations*, the organs of the central administration wish to achieve the aim of making the economic units adapt their plans to the plan of national economy by means of *economic regulators* (credit, subsidies, taxes, interest, defined standard of wages);
- the constructional framework of economy is rendered less rigid and the companies are no longer bound to strictly defined profiles;
- companies may be founded not only by central organs (Cabinet Council, Ministers, head of a chief national authority, local councils) but also by the companies themselves by association as subsidiary company (see Act VI.) 1977-re state-owned companies — repeatedly modified); contrary to earlier rulings, today, a state-owned company may pursue any activity from which she is *not debarred* by provisions of the law.

The same refers to the co-operatives.

- There is no more question of the “most important tasks” being fulfilled by state-owned companies only – though there are still several state monopolies – on the contrary, the basic principle is that tasks of national economy should be provided for by organs *capable to do so* (whether state-owned company, co-operative, economic association, private person)
- co-operatives are no longer pushed into the second line of economy – their sphere may, in principle, extend to any economic activity, the supervisory organs have to control that they observe the referring legal regulations;
- there is likewise a change in the ruling about the legal standing of legal entities – this standing extends to all economic and other activities (Ptk § 28, Section (2)) except those rights and obligations which by their nature may only be related to man; the statutes leave a wide scope for these activities and even if this is exceeded the civil contract will remain valid, it is up to the founders to object to the transgressing of this scope defined, it should be stressed, within wide limits.

According to the present-day regulations of the economic order, the following may take part in *commercial activities*:

- state-owned companies (and their subsidiaries)
- co-operatives (and their enterprises)
- association of the above (all three being legal entities)
- private tradesmen
- companies of private persons
- other organisations (enterprises of social organisations, associations).

1. SCOPE OF ACTIVITY OF CO-OPERATIVES

The situation outlined in general by the foregoing is illustrated by the legal regulations affecting the scope of activity of – any kind of – co-operatives.

The basic legal provision in the Departmental Order No. 54/1980 (XII. 18) MT. This starts from the fact that in Hungary there are many kinds of co-operatives belonging to economically (or not typically economically) operating *branches* [§ 1, Section (1)] such as agricultural co-operatives, industrial co-operatives, consumers' and sales co-operatives, home-building and maintenance co-operatives, savings co-operatives.

The legal regulations give a *general* ruling about the *activities* that the co-operatives belonging to the said branches may pursue, or more accurately about their *main* scope of activity. Within this, each co-operative “will determine their own scope of activity”. [§ 1. Section (1)]. “They may not, however, pursue any activity relegated by law, legal regulation or departmental order exclusively to the scope of activity of some

state-owned economic organ [§ 1. Section(2)]. The range of such activities has become by today very narrow. What is more, some of the activities reserved for state-owned companies may be exercised by co-operatives as well, provided they have obtained an *approval of the competent authorities*.

Excepting some state monopolies as e.g. tobacco — commercial activity is neither generally *nor* in respect of commodities *prohibited* for the co-operatives.

They only have to observe the rules prescribed by the legal regulations for commerce and in particular for trading in some commodities (as for instance hygienics).

To sum up: co-operatives as determined by the branch to which they may *sell their own produce to anyone* and may with anyone conclude a contract for the *purchase of any product*. Starting from this point it will be possible to comprehend the *commercial activity* of agricultural co-operatives in the sale of agricultural produce.

2. SCOPE OF ACTIVITY OF AGRICULTURAL CO-OPERATIVES

In the foregoing section the point of departure was the fact that — with due account taken of the legal regulations relating to the branch to which it belongs — each co-operative may determine its own scope of activity [restrictions constituted by the rulings of § 1, Section (2) but with many cases of exemption].

It appears indicated to present the activities rendered possible by the legal regulations for co-operatives belonging to the branch of agricultural co-operatives.

Previously — as already mentioned — the Act on Agricultural Co-operatives and its enacting clauses had differentiated between *basic, secondary and complementary activity*. Today, Act VI/1967 on agricultural co-operatives in its wording actually in force deems it sufficient to repeat, regarding scope of activity of agricultural co-operatives, rulings of the legal regulations already mentioned. Literally: "An agricultural co-operative may pursue any economic activity not prohibited or not reserved for state-owned economic units by law, legal provision or departmental order" (Tv § 43.) The enacting clause [Cabinet Council Order 7/1977/III. 12. (MT) declares: identical regulations are to be established for one and the same activity, be it pursued by a state-owned company or an agricultural co-operative [§ 64, Section (1)].

In Hungary, some activities may only be pursued under observance of certain — very strict — conditions (sanitary, safety etc. regulations). Bureaucrats of the since abandoned mechanism, misguided by theses teaching the omnipotence of national property found everything in the best order where state-owned enterprises were concerned but looked askance at production plants of co-operatives. That is why it seems necessary to lay stress on the ruling according to which: "In case of withdrawal of a certificate or permit issued by authority, no legal pre-

judice may be applied on account of activities pursued bona fide on basis of the said permit [§ 64. Section (3)].

To sum up: An agricultural co-operative — same as any other co-operative is not excluded from carrying on commercial activity. As regards, however, the way of doing so is made apparent in Section 3. not concealing the differences between possibilities and realities.

3. MARKETING OF THE AGRICULTURAL CO-OPERATIVES' OWN PRODUCTS AND PURCHASE OF THE INDUSTRIAL ARTICLES REQUIRED FOR THE AGRICULTURAL PRODUCTION

"Channel" is a notion calling forth various ideas: the lagunas of Venice, the canalisation carried out by early monks for instance in the north of France where the river Sevre reaches the Atlantic in order to gain arable land — if I am right this is some place north of Niort — however, in many places and so in Hungary, channels mean the outlets through which an economic unit — for instance agricultural co-operatives may sell their produce to one or several customers that is to say through one or several channels.

With the exception of some commodities — tobacco, red pepper (seasoning paprika), wool — an agricultural co-operative may sell its products to anybody.

The customer thus may be:

- a) state-owned purchasing agency (slaughter-house, export company)
- b) consumers' co-operative (in Hungary AFÉSZ = General Consumers and Sales Co-operative)
- c) another, state-owned or co-operative agricultural enterprise, such as state farm, agricultural co-operative, special-purpose agricultural co-operative
- d) large consumer economic unit or budgetary unit such as hotels, state-owned or co-operative catering establishment, hospitals.
- e) private tradesman (grocery, restaurant)
- f) actual consumer

The contract which in cases a) to d) covers the turnover of the product is a special type of contract drawn up for *mass-turnover* of agricultural products, called "*Contract for the marketing of agricultural products*" (Ptk §§ 417 — 422).

There is nothing to prevent — particularly if the agreement is immediately followed by the performance — that the parties conclude a sales contract (Ptk 365 — 377) with agricultural cooperatives or else sell their products by means of commission contracts (Ptk §§ 507 — 515) (see Sections 5. and 6.). The trade relations as per a) to d) are characterised by the fact that, as a rule, the parties agree with each other long before the time of performance. It might be said that a large-scale agricultural unit (state-farm, agricultural co-operative, special-purpose agricultural co-operative) elaborate their production plans on basis of such contracts

concluded well in advance for instance prior to the sowing or before commencing the fattening of animals.

On the other hand, trade relations with *private merchants as per e)* are characterized by their spontaneity, eventuality. Private merchants buy goods from agricultural co-operatives mostly in the open markets where producers — thus also agricultural co-operatives — appear with their goods; still it frequently occurs that an agricultural co-operative and the merchant have a preliminary agreement to the effect that the farm will continually supply to the merchant certain produce (mainly fruit and vegetables) during the whole year, or season.

Direct sale to *consumers* can be effected in open markets or else in a shop kept by the co-operative. In the former case, agricultural co-operatives, same as any other producer, will appear with their goods in the market place or market hall, will rent a stand; in the latter case, they will on their own premises provide the interested consumers all the year round with the agricultural produce of the appropriate kind (vegetables, fruit, porkbutcher's goods such as sausage, cured or otherwise preserved meat and bacon). The agricultural co-operative may sell in such permanent shops not only their own produce (though in most cases they do that) but also goods purchased for the purpose from other producers. The delicatessen shops of the agricultural co-operatives — and in general of large-scale farming estates — are very popular with the customers for their goods on sale, particularly the porkbutcher's wares and pickles offer special flavours characteristic of the region where the co-operative is located.

Mention has to be made of the wine-growers' shops of viticultural co-operatives. They are popular because they cater for the palate of customers preferring the characteristic wines of a certain region. These shops are simply fitted out and sell as complement only some snacks to enhance the taste of the wine.

In Hungary, as in other countries of advanced agriculture, farming is greatly mechanised, using a multitude of industrial articles. Up to 1960 the large-scale agricultural estates had no *machine park of their own*. Mechanized labour of basic importance: ploughing, soil preparation, sowing, reaping were performed by the state-owned *machine stations* on the fields of the agricultural co-operatives.

Plant care, plant protection and to a great part also harvesting were done by manual labour or by the help of beasts of burden (horses or cattle). However, the machine stations had no interest in the result of their work which then reflected this attitude. Therefore, as soon as the agricultural co-operatives possessed the necessary funds (in this they were assisted by the deleting or their earlier credit debts and by a considerable raise in the purchase-price of the products sold to the state purchasing agencies) they purchased the machines from the machine stations which no longer performed any field work but did servicing and repairs. Later on they were less and less needed even for this, because the large estates

and co-operatives established — by their own efforts or in association with others — their own service and repair stations.

From the sixties onwards, and particularly after 1968, the agricultural co-operatives have their own machines. At the beginning the machines were allocated. This meant that agricultural machines could be purchased by co-operatives that received a permit (*allocation*) to do so from the *authority* entrusted with organising the *distribution* of these machines. Later on — from beginning of the seventies — the supply of machines was established on commercial basis and since that time every agricultural co-operative possessing their own (or credit granted) funds, may purchase any means of production from the commercial enterprises to whose sphere such equipment belongs.

Up to 1981 the sale of agricultural equipment was the task of Agrotárszt, a highly centralized organisation extending over the entire country. The meaning of the word “trust” in Hungary’s economic life needs some explanation — let us quote here the referring provision of the Civil Code: “The founding organ may — with a view to promoting the economical functioning and the development of the enterprises under its supervision set up a trust for the directing of these enterprises. The trust and the enterprises (companies) within its frame are legal entities [Ptk § 39, Section (1)].

For a better approach to the role of the trust the Company Act (VI/1977)³ should be consulted. According to it, the trust may instruct the company to carry on a certain defined activity and may issue obligatory directives for the company’s economic operations; it also has the right to re-group the assets of the company [§ 49, Section (1)]. The trust is responsible for it that the company shall meet its commitments (such as paying taxes) towards the state budget [§ 50, Section (1)].

Should a company within the trust work at permanent loss or has in consequence lost its reservefunds, it is the trust that will make arrangements for settling the loss (§ 50, Section (2)). It is not difficult to see that the trust acted for the company, and the companies had next to no independence. Within the trust each company managed to survive, profit of those who did better came up for the losses of the unprofitable units.

Thus it is no wonder that companies — which, as a rule, catered for an entire county by supplying agricultural equipment — made no efforts — or hardly any — to provide good service for their customers. No estimate was made of the requirements, performance was delayed spare parts were not made available or were supplied at random.

In 1981 Agrotárszt was liquidated and the enterprises united under it became independent state-owned companies of which an increased activity is expected. How this activity will work out cannot be foreseen at the moment, the general recession is felt by the farming estates — among them by the agricultural co-operatives — and they are not in the position to make major investments. The situation is similar in respect of fertilizers, soil improving agents, pesticides as well.

To sum up: The agricultural co-operatives purchase the industrial articles required for their operation from state-owned companies in general established for supplying these goods to customers of a county. There are, however, no administrative measures to prevent orders being placed direct with the manufacturing works. This market is practically ruled by the law of supply and demand, with the proviso that the price of major machinery equipment is fixed by the central authority and certain products, such as motor vehicles can only be obtained if the co-operative has been allotted a permit by the Ministry of Agriculture and Food Administration. For major purchases the farmers may obtain credit facilities.

4. THE AGRICULTURAL CO-OPERATIVE AS INTEGRATOR OF THE SMALL-SCALE (HOUSEHOLD) PRODUCTION

In respect of agricultural production the original conception of the socialist system had been the following: the large-scale enterprises farming the bulk (almost 100 per cent) of the agricultural area, the state-owned estates and the co-operatives are producers of commodities. Their task is to provide for the population all the agricultural items that can be produced on the soil and in the climate of the country, further to produce industrial plants and to create the commodity basis for the agricultural export.

On the other hand, small farming — that as per the original conception should only have existed as household farming carried on by the members of the agricultural co-operatives for the purpose of providing the member and his family with fruit, vegetables, fowls, possibly keeping a cow or pig(s) for their own consumption.

This conception did not work out as expected. The fact is that today in Hungary the produce of small farming exceeds the personal requirements of the producer (and his family) and has become commercial commodity. Small farming has taken three forms:

- a) household-farming of the workers of state-owned estates and of members of co-operatives;
- b) farming lots allocated as emolument to the workers of state-owned estates and some groups among the pedagogues;
- c) smallholds of wage-earners and pensioners.

Smallholders come likewise under the rule that they have to find buyers for their goods. This constituted no problem during about ten years after the socialist re-organizing of agriculture — the setting up of co-operatives — (1959 — 1960). The market evinced shortage and the smallholders appeared with agricultural products mostly offered in natural state preserved by some "home-made" method and found customers for their goods without difficulty.

The seventies brought a change in the situation, such as:

- a) The regulations restricting smallhold farming ceased to exist. Contrary to the earlier situation when legal provisions defined the number of cattle, sheep, pig that a smallholder — particularly a member of a co-operative was allowed to keep, he can now keep any number he can cope with.
- b) Over and above relinquishing restrictions, smallholders are encouraged to produce.
- c) Smallholders have adopted by and by up-to-date agricultural technologies; this was assisted by the renewed availability (from production and from import) of machines that can be used in small-scale farming.
- d) Under these conditions the quantity of the agricultural products of small farming kept increasing and the market became more and more saturated.
- e) The interest of the consumers turned from the produce brought to the market in natural state more and more towards semi-finished, ready-to-cook goods, but the smallholders were not in possession of the technique necessary for producing such goods.
- f) The purchasing agencies that buy the bulk of agricultural produce from the large-scale producers were accustomed to obtain the goods in one lot, in uniform quality, in great quantity and possibly at some degree of semi-finished state.

Thus the small-scale producer offering a restricted quantity at a time and even this on a uniform standard of quality, was no longer competitive in some field of the market. Produce of exceptionally good quality could be sold without difficulty. The merchandise, however, had to be taken to the market. The small-scale producers, however, do not do farming as their main job and the transport to the site of sale constitutes a problem for them.

The new situation required new solutions.

The targets were:

- to achieve that the produce of the smallholder answer the requirements of the national standards as well as the general requirements of the market;
- the producer had to be relieved of the burden of procuring the articles necessary for the production same as of the enormous task of selling their goods;
- the small-scale producer had to be assisted in joining other producers in order to offer reasonable quantities to the purchasing agencies;
- in the case of field produce assistance had to be provided for performing work — where needed and feasible — by large-capacity agricultural equipment.

Several attempts were made to meet these targets. The consumers' and sales co-operatives arrived farthest in organising sale and purchase by up-to-date methods for the small-scale producers, but, for one thing, they could provide us assistance in the production and, for another, being purchasers themselves, it was in their interest to obtain the goods of the smallholders at the lowest price.

Thus it appeared obvious that an integrating organisation was needed which would provide assistance for the production and at the same time would have interest in selling the smallholder's produce at the optimum price. Agricultural co-operatives are economic organisations of this kind.

As time went on, this theoretical recognition was followed by practical measures. The agricultural co-operatives integrated first the household farming of their own members, then they extended this activity to all small-scale producers of the district. There are some differences in the two kinds of relations but these have no bearing upon our present subject.

In what exactly does consist the integrating activity of an agricultural co-operative?

In short: the agricultural co-operative provides assistance in sale and purchase for the small-scale producers, and does so because he has interest in selling their produce at the best price that can be attained in the market.

In detail:

- a) The agricultural co-operative performs — for the members without any compensation, for other small-scale producers on basis of an arrangement but in any case against payment — the field work requiring major agricultural equipment (ploughing, soil preparation, sowing, spraying).
- b) In order to achieve that the produce of the smallholder correspond to the standard requirements, the co-operative provides sowing seed, propagation material and ensures that the smallholder obtains breeding material (chicklings, piglets, etc.)
- c) Producers from wholesalers — at favourable price — the industrial items required for the agricultural production and forwards them to the smallholder.
- d) Provides expert advice to the small-scale producers; engages an *agronomist* with the exclusive task of attending to the smallholders' problems.
- e) When, far in advance of the time of performance, the co-operative concludes a sales contract in order to ensure placing of the goods, it always takes into account the identical produce of the integrated small-scale producers.
- f) By the time of performance the co-operative collects the produce of the smallholders, performs their classification, packing, as necessary and forwards it to the place of acceptance. Thus it will be achieved that the small-scale produce comes to sale in large quantities, properly classified.

- g) If the agricultural co-operative sells the goods to a state-owned or co-operative-owned purchasing agency (slaughter-house, grain trading companies, canning factories), with no regard whether it comes from its own farm or from that of small-holders the co-operative will get a *supplement over the price* as a reward for delivering a large quantity of produce in uniform quality. The co-operative's interest is served by this and the favourable arrangement is one of the compensations received for their integrating activity. If co-operatives keep their own retail shop, they are entitled to the difference between the producer's price and the retail price. This constitutes another source of profit.

Today the small-scale producer is in a *very favourable position* in Hungary, for it is up to him to choose between the following methods:

- he himself sells his produce in the market (particularly if it meets some special demand);
- he comes integrated in the operation of the consumers' and Sales Co-operative Afész — a favourable arrangement if he requires assistance in production;
- joins the integration of the agricultural co-operative the advantages of which have already been pointed out.

Still, the foregoing will only hold true in an optimal situation. If there is nobody to organize the sale for the small-holder, he will have to take his produce to the market. This may not always turn out successful. That is why a fairly great amount of goods produced by small-scale producers will perish it, owing to its structural features, the purchasing agency is not interested in obtaining it.

5. PARTICIPATION OF SPECIALIZED AGRICULTURAL GROUPS IN THE COMMERCIAL ACTIVITY

In 1984 a considerable change occurred in the organisational structure of Hungary's economy. This drifted (and still does) in two directions:

- a) Within the state-owned sector several big enterprises in monopolistic position — generally organized as *trusts* — were abolished in order to call forth a *competition* between the minor companies arising out of them. The centres established in order to represent the joint interests of the new companies and to co-ordinate these interests were of less coherent structure than the trusts had been. These centres (not always called that) perform their duties under the guidance of a board of directors which consists of the directors of the companies and its president is a (general) director appointed by the head of the founding organ (ministry or government authority).
- b) The rigid company structure of more than thirty years' standing was slackened and the companies were enabled to set up subsidiary companies, to establish joint work teams; it became likewise pos-

sible to call into being small enterprises, small co-operatives and specialised co-operative groups of considerably simplified structure and administration.

The aim is to find those organisational forms in which a group or team can pursue some economic activity independently, with increased intensity and with more sense of responsibility so that the income of the workers (members) should depend, pre-eminently on the economic results achieved by the team.

The *specialized group of an agricultural co-operative* is an organisational form of economic activity which makes it possible that within the co-operative there could be set apart a group or team doing one specialised kind of work as for instance viticulturists within a co-operative mainly engaged in grain producing but possessing vineyards as well and this group acts with a high-degree independence by using the assets, funds, soil made available by the co-operative and/or by the members of the group.

The specialised agricultural work group has *autonomy* and a certain *economic as well as accounting independence*. The specialised group is *no legal entity* (Government Order 27/1981/IX. 5.) concerning specialised agricultural work groups § 1, Sections (2) (3)⁴.

Basis of the economic activity of the group is constituted by the *private holding* of the members, but carrying on joint work in the common interest of their activity, they may set up a joint farm (as per the example quoted in the foregoing: raising graftlings) and joint plants (wine-grape processing, wine cellars) [see the above Government Order § 11, Section (3)]. In these circumstances — when the actual *production* goes on at the members' own holdings — the main trends in the activity of the specialised groups are the *purchase and sale*⁵.

The relative independence of the specialised group is made apparent by the following:

- *out of their takings* they cover the costs of production the other expenses and they set up their fixed funds and their working funds (see above Government Order § 12, Section (3));
- the co-operative is not entitled to commit the specialised group in respect of production, purchase, sale and the utilisation of their income [§ 13, Section (3)];
- on the other hand, the co-operative will be responsible *by their entire assets* for the debts related to the activities of the specialised group [§ 15, Section (2)], while the members only to the extent of the funds they contributed — consequently the specialised group may only operate on basis of a decision of the general meeting of the co-operative and only within the scope there defined [§ 3, Section (3)]. The board of the co-operative will determine the limit value beyond which a commitment for the specialised group may only be undertaken upon the previous written approval of the board [§ 13, Section (1) Para e)].

In connection with the commercial activities of a relatively independent agricultural specialised group a few problems will arise. The *first* of these in the *purchase and sale* effected by the specialised group *for the sponsoring co-operative*. The group may perform such tasks by the following arrangements:

- on basis of an agreement referring to the relations of the group and the co-operative and approved by the general meeting or by the meeting of deputies [§ 3, Sections (2) (3);] or
- on basis of individual appointment (Civil Code Ptk § 474 to § 483) and/or
- on basis of a commission contract (Ptk § 507 § 513.)

In the first two cases the specialised group acts *in name of the co-operative*, obtains rights and undertakes commitments direct on the co-operative's behalf.

The third case is more complex. The specialised group is no legal entity. It cannot conclude contracts in its own name. A contract with a seller or a buyer i. e. a so-called performance contract may be concluded not in the group's but only in the co-operative's behalf. That is so, however, the co-operative is at the same time principal of the specialised group. There seems to be a strange mixing up of legal entities or subjects at law.

In the *second case* the specialised group will effect sale and purchase for third parties. Starting from the fact that the group is no legal entity, once again the position is that with the seller or buyer (depending whether the group purchases or sells) the contract will be concluded not in the group's but in the co-operative's name.

Dogmatically viewed, the situation is intriguing: the party in whose name the contract is concluded (the sponsoring co-operative) will not be held committed.

This way *the sponsoring co-operative will become the subject of a contract to which there will be no party possessing rights or undertaking commitments*. On the other hand — as already said — if the contract is violated by the group, the co-operative will be held *responsible* to the full extent of their assets. German dogmatics knew earlier the noting of commitment without responsibility (Schuld ohne Haftung) — Hungarian law turns in this case the position the other way round and the situation will be responsibility without commitment (Haftung ohne Schuld).

The *third case* is when the specialized group effects purchase for its own members or sells the member's commodities. What can be the legal solution? Will the produce handed over for sale become the property of the cooperative? (it cannot be that of the group, the group being no legal entity). Does the group according to the rules of its inner circumstances carry out a responsibility? And if the performance is not satisfactory, who will be *responsible*? the group or the co-operative?

quite a number of questions. Which shows that goodwill is not always sufficient.

Those engaged in studying and/or applying the law affecting co-operatives have still a number of tasks before them in funding dogmatic support for novel legal phenomena. In any case, it has become clear that legal entity is no longer sufficient to express the legal subject status of co-operatives; nor can the rule be applied that responsibility (liability) bears primarily always upon the party that has undertaken some commitment.

It is therefore advisable to fix the questions of liability possibly arising from commitments undertaken by the specialised group in the agreement concluded by the co-operative with the specialised group in order to define their relations to each other.

In spite of unclarified dogmatic, there is no doubt that a relatively independent specialised group can by its commercial activity relieve the co-operative from numerous task and as small unit with the interests of its members closely related, it may be a more appropriate organisational form to serve these interest than a large co-operative might be.

6. COMMERCIAL ACTIVITY OF THE SALES, PURCHASE AND SERVICE COMPANY OF THE AGRICULTURAL CO-OPERATIVES

In 1979 a part of the agricultural co-operatives — through articles of partnership brought into being the Joint Sales, Purchaser and Servicing Enterprise of Agricultural Co-operatives (T. Sz. K. E. R.). According to Hungarian Law, the joint enterprise is one of the companies constituting a legal entity which are established by economic organisations by means of articles of partnership (Civil Code § 58, Section (1) para (3); Departmental Order 4/1978.⁶ §§ 26 to 31).

Organisational structure of the Enterprise:

- a) This is nation-wide enterprise and its central office is its directing, controlling and administrative organ. The highest instance for taking decisions is the Board of Directors consisting of the representatives of the members. The collective operative managing organ is the Management the members of which are elected for 5 years by the Board from among their own members.
- b) The Enterprise has 19 regional centres (one for each of the 19 countries) — these operate as semi-independent units.

The joint enterprise has for its main task the *sale* of the products of agricultural co-operatives. In this sphere two procedures can be applied:

- obtaining by a transfer of property contract (sales contract, contract about the sale of agricultural produce) from the agricultural co-operative the produce offered by the latter, selling it as its own property either to resale organs (wholesaler, foreign trade company,

- slaughter house...) or in retail to consumers, as according to its statutes, the enterprise can keep food-stores, restaurants.
- takes the produce on commission basis, undertaking to sell it by contracts concluded in its own name. The sales price is paid to the co-operative and the enterprise receives a commission on it.

The co-operative acting as wholesaler supplies agricultural products to retailers. It may also act as agent, i. e. as intermediary between the producers and the purchasing agents.

The enterprise's services include packing, possibly carrying tasks or the organising of the transport of goods.

Entrusted by the co-operatives (in fact on commission basis, this time purchase commission) the enterprise undertakes to procure agricultural and industrial articles required for the agricultural production.

A specific activity is to promote the acquisition of experience by organising through travelling agencies trips in Hungary or abroad where the delegated members (experts) of the co-operative can study the methods of others and have opportunity for the exchange of ideas and experiences.

The profit of the enterprise is shared by the members. 40 per cent of the profit is distributed proportionately to the funds by which the members participate, 60 per cent according to their participation in the turnover achieved.

This system of distribution may induce the members to sell or purchase through the intermediary of the enterprise. Any losses of the joint undertaking is borne by the members in proportion to their contribution of funds.

At first sight the enterprise seems to be an economic organisation set up by the agricultural co-operatives and suitable to strengthen the market position of the agricultural co-operatives. Yet, it realizes a slight turnover only. There are several reasons for this.

- a) Hungary is a rather small country and gives little scope to mediating commerce. The parties can easily find each other without a commercial organisation acting as mediator and thereby increasing the price of the product.
- b) The enterprise TSZKER as independent company becomes detached from the member co-operatives. It has, in fact, its own life to such extent that the control possibilities of the members are reduced to the minimum.
- c) The organisational structure is bureaucratic it is a national centre on top of the hierarchy, a true ruling power — so that the regional centres have a very slight independence left to them. The organisation — like, alas, many other centralized economic bodies — does not adapt itself to the economic tasks but copies the model — and attitude of the Office, of the Authority.
- d) Practically, the Enterprise takes the attitude towards the agricultural co-operatives (whether they are members or not) employing

its services as there were no connection between them apart from the ad hoc commercial contract in which, of course, each of the parties will consider their own interest only.

These days the agricultural co-operatives avail themselves of the services of the Enterprise in the case of purchases for which they have to obtain permits or approval (more exactly: good connections) and this is how an economic organisation will by and by become a simple office.

The state-owned estates have likewise a commercial centre of this type, established in the form of limited company, bearing the name: State Farm Commercial Company Ltd. This is older than the Enterprise of the co-operatives and is somewhat more efficient.

7. AGRICULTURAL EXPORT/IMPORT AND THE CO-OPERATIVES

In Hungary's economy an important part is played by the export of agricultural goods or as they are more frequently called of the food products⁷. Approximately one third of the goods produced by the food industry comes to be exported. The export of agricultural products plays in important role in maintaining the balance of the national economy. Only a small part of the export revenue of the agriculture is used for import purposes, so that this income serves also to cover the import demand of other branches of economy.

The export of agricultural goods forms part of the foreign trade. It seems therefore indicated to say something of the foreign trade in general.

The foreign trade is regulated by the Act III/1974.⁸ This — heretofore mentioned as "the Act" defines the status of the foreign trade as state monopoly as well as its tasks and the part it plays in the national economy. It also sets up the basic rulings about organisational system, operation, directing and controlling and regulations the basic rights and commitments of the state administration, the economic organisations and of the citizens in respect of the foreign trade. (§ 1. of the Act).

Some more important rulings of the Act required for understanding what follows are:

In the People's Republic of Hungary the foreign trade is a state monopoly [§ 3, Section (1)].

This means that the appropriate organs of the State will

- by concluding international (inter-state) contract and by other means provide the international conditions for the foreign trade;
- set up the organisational system of the foreign trade;
- grant the right to carry on foreign trade activity;
- direct and control the said activity [§ 3, Section (2) of the Act.]

The tasks mentioned above will be, as a rule, carried out by the Ministry of Foreign Trade or, in exceptional cases, by the Cabinet Council (the Government) [§ 3, Section (3) of the Act.]

The Act considers as foreign trade activity the preparing and concluding of foreign trade contracts, this being the contract concluded by the Hungarian party with a foreign party (§ 5. of the Act). Such contracts are primarily the contracts transferring property but the scope extends to contracts regulating in various ways the co-operation between foreign and Hungarian companies.

Foreign trade activity may be carried on by an economic organisation interested with the right of doing so (company entitled to carry on foreign trade). Such a company is an economic organisation which is interested with this right

- by its deed and statutes (foreign trade company)
- by a special authorisation (company entitled to carry foreign trade) (§ 6. of the Act).

In Hungary there are foreign trade companies expressly founded by the government or the Minister of Foreign trade to exercise foreign trade (and *no other* activity). At the beginning these companies were exclusively state-owned enterprises, later on co-operatives were likewise established for doing foreign trade.

The second group of enterprises, co-operatives and other economic units such as economic associations (Civil Code §§ 568 to 572) invested with the right to exercise foreign trade comprises the economic organisations whose main activity is not the foreign trade but some other economic activity. A company or a co-operative opining that it might achieve better results if it effected sales abroad by its own efforts or would establish (without the intermediary of a foreign trade company) direct co-operation relations with a foreign party, may apply to the Minister of Foreign Trade for the right of foreign trade activity.

The right of carrying on foreign trade can be granted to the applicant if this serves the foreign trade interests of the national economy and the economic organisation in question possesses the funds, organisation and personnel required for a successful foreign trade activity [§ 7, Section (1) of the Act]. It should be mentioned here that there are few agricultural co-operatives that can meet these requirements. Therefore, if an agricultural cooperative — or some other corporation — wishes to approach foreign trade, it will have — and this is the third possibility — to establish an economic association with a company entitled to carry on foreign trade. In this case the agricultural co-operative supplies the produce i.e. the assets while the company entitled to do foreign trade provides expert foreign trade knowledge, i.e. personal contribution. Establishment of an economic corporation for foreign trade can be likewise initiated by an economic organisation invested with foreign trade right. As a rule, there is nothing to prevent the formation of such corporations. (Departmental Order 4/1978 on economic corporations § 46). To resume: an agricultural cooperative may be the subject of a foreign trade contract and/or may pursue foreign trading activity in more or less direct form in the following cases:

- it has been granted the right of foreign trading — it may be the direct subject of a foreign trade contract; or
- it has established with an organisation invested with foreign trade right an economic association or corporation for foreign trade — in which case not the agricultural cooperative will be the subject of the foreign trade contract, but that economic association (§§ 57 to 61 of the Act) or economic corporation (§§ 568 to 572 of the Act) of which the cooperative is a member.

Let it be added that for a long time the agricultural cooperatives had hardly any relations even with Hungarian foreign trade companies, the route of an agricultural produce destined for export having been — even if it was exported in natural state — the following:

Stage 1. Agricultural producer — state-owned company or cooperative as purchaser.

Stage 2. Inland purchasing agency — Hungarian foreign trade company

Stage 3. Hungarian foreign trade company — foreign customer.

The route of agricultural import goods was likewise lengthy till it reached the producer.

Stage 1. Foreign supplier — Hungarian foreign trade company

Stage 2. Hungarian foreign trade company — production contractor and distributor for sowing seeds;

Stage 3. Production contractor and distributor for sowing seeds — agricultural producer.

For a long time it was entirely indifferent for the agricultural cooperatives whether the route of the produce ended in the inland or the foreign market. They did not even know this. Today this is known in the case of several products and the export price supplement is an inducement. To incite the producer to make special efforts in order to attain introduction to foreign markets it would be necessary to let it have a share in the foreign (convertible) exchange for which the produce has been finally sold.

However, Hungary being in need of convertible foreign exchange, such currency is not obtained by the party actually producing the goods for which it is paid, but comes to be allotted.

If today some produce — such as livestock, pork — is exported, this is effected either by the Hungarian foreign trade company or else by an association or corporation entitled to foreign trading. In the first case the proceeding is ruled by the legal standards governing the inland contracts of the foreign trade companies, in the second case it is ruled by the corporation contract.

These contracts come under the ruling of the Departmental Order 32/1967 (IX. 23) MT.⁹

As per the legal provisions, the foreign trade companies as well as the inland (producing) parties have a free choice of the type of contract that they want to conclude in respect of the foreign trade activity.

There is one exception to this: a sales contract (Civil Code §§ 379 to 386)

may only be concluded within the sphere determined by the Minister of Foreign Trade. (§ 1. Sections (1) and (2) of Departmental Order 32/1967 (IX. 23) MT.

The most important type of contract about large-scale turnover of agricultural products might be a contract of free choice, however, the foreign trade companies are, in most cases, willing to conclude a commission contract only.

Their prudence is comprehensible. If they buy the goods but cannot sell it, they have to bear the loss. If they take it on commission, they do not have to pay the sales price and get a commission — some commission even if they have not succeeded in bringing about a contract of realisation with the foreign party. The risk falls upon the inland seller.

Hungarian law rules about the foreign trade commission by preference given to the commissioned party (the Hungarian foreign trade company). Departmental Order 32/1967 (IX. 23) §§ 13 to 32.

The present study started from the hypothesis that the agricultural cooperative wishes to sell agricultural produce and is purchaser for industrial articles required for the agricultural activity. This is indeed the case — in general. In the past ten years, however, a great number of agricultural cooperatives have undertaken industrial production, thus offering for sale not only agricultural produce but industrial articles as well and they purchase not only industrial articles required for the production but also industrial raw materials. The sale — to the processing industry, to commercial companies dealing in industrial goods is covered by a sales contract (Civil Code §§ 379 to 386) and the same type of contract is mainly applied for the purchase of raw material as well.

The cooperatives keep no shops selling industrial products, however, besides the sales contract, as principal legal form, they may use in the sale and purchase of industrial articles various other types of contract suitable to cover the transfer of property right (right of use) in the turnover of industrial goods.

NOTES

¹ Civil Code Act IV/1977 about modification and uniform wording of Act IV/1959 on the Civil Code of the People's Republic of Hungary

² Cp. French-Hungarian agro-legal seminary 1982 (Budapest University of Law, Institute for Post-graduate Studies)

Imre Sáradi: Role of the State in the Turnover of agricultural products. Volume I. I. Page 17–33

Imre Sáradi: Le rôle de l'Etat dans les échanges des produits agricoles. II. 119–138 p.

Imre Sáradi: The Sales Contract for Agricultural Products. (Doctoral dissertation. Manuscript 1982 1010 p).

³ Full title of the legal provision: Act VI/1977 of the state-owned enterprises

⁴ A specialized agricultural group may be set up not only within an agricultural cooperative but also in specialized agricultural cooperatives, piscary, consumers', sales and purchasing cooperatives, as well as state-owned estates, state forestries, further in economic corporations belonging to this and to any other food producing branch. (Departmental Order 27/1981/IX. 5/MT, § 1, Section/1)

Accordingly the legal provision here quoted consists of three parts:

- the first part (§ 1) defined the notion and purpose of the specialized group;
- the second part (§§ 2 to 27) refers to the specialized groups of cooperatives;
- the third part (§§ 28 to 33) contains the provisions referring to specialized groups of state-owned estates.

⁵ The specialized group may carry on agricultural production (cultivation of plants, fruit, wine-grape and vegetables, stock breeding) forestry, primary wood processing, further, processing and selling of agricultural produce and products; producing maintenance and overhaul of materials, implements and equipment for agricultural plants and small holders' farms as well as activities related to agricultural production and processing. (Departmental Order 27/1981 (IX. 5/MT § 11. Section (2)).

⁶ Exact title of the legal provision: Legal Provision 4/1975 of the Presidential Council of the People's Republic of Hungary about the economic associations.

⁷ Imre Sárándi: The Sales Contract for Agricultural Products (doctoral dissertation thesis, Budapest 1982)

⁸ Exact title of the legal provision: Act III/1974 on the foreign trade

⁹ Title of the legal provision: Departmental Order 37/1967 (IX. 23.) on the inland contracts of companies carrying on foreign trade.

DIE ROLLE DER LANDWIRTSCHAFTLICHEN PRODUKTIONSGESELLSCHAFTEN IN DER VERWERTUNG DER LANDWIRTSCHAFTLICHEN PRODUKTE

SÁRÁNDI IMRE

1 Vor der Zeit der 1968-jährigen Wirtschaftsreform gehörte zu dem gesetzlich bestimmten Aktivitätsbereich der Landwirtschaftlichen Produktionsgenossenschaften nur die streng genommene landwirtschaftliche Produktion (Pflanzenbau, Viehzucht) aber nicht z.B. das Verarbeiten und Verwertung in eigenem Geschäft. Die erzeugte landwirtschaftliche Produkte in ursprünglichen Zustand — in gewissen Zeiten auf Grund von Staatsverwaltung Vorschriften — wurden gewöhnlich selbst um Erzeugungskost, oder sogar unter dessen, später (seit 1957) auf Grund von Kontrakten an weiterverkaufende staatliche Lebensmittelunternehmen bzw. dazu spezialisierte staatliche und genossenschaftliche Handelsunternehmen verkauft;

2 Die Wirtschaftsreform rufte ins Leben die Möglichkeit der sogenannten „mehrkanal“ Verwertung. Diese Möglichkeit bedeutete genauer, dass die Landwirtschaftliche Produktionsgenossenschaften konnten ihre Produkte für jedermann und auch in den eigenen Lebensmittelverkaufsstellen — unmittelbar dem Verbraucherverkaufen.

3 Die Privatproduzenten — die könnten Werktätige der Landesproduktionsgesellschaften und andere Staatsbürger z.B. Hauptbeschäftigte in Gewerbe, Handel usw. sein — könnten früher ihre landwirtschaftliche Produkte nur schwierig auf Markt zu bringen. Wegen das schwache Interesse der Werktätigen in dem sozialistischen Handel zeigten die Grossunternehmen — die schon angewöhnt waren grössere Mengen von gleichmässigen Qualität von den Grossproduzenten über zu nehmen — kein Interesse auf die Angebote der Kleinproduzenten. Auch die staatliche Organe waren nicht befreundet mit den Privatproduzenten, denn befürchteten dass diese Tätigkeit „erzeugt den Kapitalismus“.

Die Ausschaltung dieser ideologischen Ballastes wurde erkannt dass die wirtschaftliche Situation ist dann gesund wenn in den einzelnen Wirtschaftszweigen auch gross, mittel und klein Unternehmen vorhanden sind.

Die neue rechtliche Vorschriften berechtigten die landwirtschaftliche Produktionsgemeinschaften auch die Produktion und Verwertung auch in den eigenen Hauswirtschaften der LPG Mitglieder und in den sogenannten Hilfswirtschaften zu „integrieren“ damit in der Produktion und Verwertung behilflich sein. Auf diese Weise sammelt die LPG die Produkte der Produzenten und verkauft diese in grossen Partien (Der Kleinproduzent kann natürlich selbst seine eigene Produkten verkaufen.)

4 Die landwirtschaftliche Grossbetriebe haben in Form von wirtschaftlicher Assoziation und Genossenschaft (Ptk 57—61 §, 568—572 §) bzw. auf Grund der Verordnung 1978 Nr. 4. mit Gesetzkraft seine eigene — in erster Linie Grosshandel und Kommissionstätigkeit ver-
schende — gemeinsame Landesunternehmen ins Leben gerufen.

5 Das Studium beschäftigt sich mit den Problemen der in den 1—4. Punkten genannten Organe und Aktivität, suchend auf welchem Wege die Weiterentwicklung dieses Mechanismus möglich wäre und wie könnte man viel wirksamere Formen der Verwertung der Produkte zu finden.

РОЛЬ СЕЛЬСКОХОЗЯЙСТВЕННЫХ КООПЕРАТИВОВ В СБЫТЕ СЕЛЬСКОХОЗЯЙСТВЕННЫХ ПРОДУКТОВ

ИМРЕ ШАРАНДИ:

1 До хозяйственной реформы, проведенной в 1968 году в сферу деятельности сельскохозяйственных кооперативов входило лишь — в строгом понятии — сельскохозяйственное производство (растениеводство и животноводство). В это время не было возможности для переработки этих продуктов и их сбыта в магазинах кооперативов. На основе государственного указа кооперативы продавали свои продукты перерабатывающим предприятиям, государственным предприятиям пищевой промышленности, выделенных для продажи сельскохозяйственных товаров и специализированным государственным и кооперативным торговым организациям в натуральном состоянии, обычно ниже себестоимости или по цене близкой себестоимости.

2 Хозяйственная реформа создала возможность для «многоканального сбыта». Это означает то, что сельскохозяйственные кооперативы имеют право продавать свои продукты любой организации или же их продавать в своих магазинах непосредственно потребителям.

3 Раньше частные, мелкие производители имели трудности в продаже своих сельскохозяйственных продуктов. Частными, мелкими производителями могут быть: работники кооперативов и госхозов или штатные работники промышленных, торговых и других организаций. Из-за отсутствия стимулирования работающих в социалистической торговле крупные предприятия — для которых было привычно покупать товары в больших объемах и равномерном качестве — не обращали внимание на предложения мелких производителей. Государственные органы также не смотрели положительно на частное производство, так как на основе устаревшей идеологии боялись «возрождения капитализма». Признавая тот факт, что как правило, экономическая структура функционирует нормально в том случае, если в отраслях экономики присутствуют крупные, средние и мелкие предприниматели было вынесено распоряжение о том, что сельскохозяйственные кооперативы могут оказать помощь своим членам в производстве и сбыте. Здесь имеется в виду производство сельскохозяйственных продуктов в усадебных и подсобных хозяйствах. Это означает, что сельскохозяйственные кооперативы организуют сбор продуктов и продажу, (но в больших объемах). Конечно, мелкие производители также могут продавать свои продукты непосредственно потребителям.

4 Крупные сельскохозяйственные предприятия в форме хозяйственных объединений и обществ (гражданский кодекс § 57—61, § 568—572) создали на основании закона (№ 4. 1978 года) свои предприятия, охватывающие всю страну. Эти предприятия ведут в первую очередь комиссионную деятельность.

5 Доклад занимается проблемами организаций (приведенных в пунктах 1—4) и их деятельности. Ищет путей и возможностей развития хозяйственного механизма и более эффективных форм сельскохозяйственных продуктов.